

**PREPARED TESTIMONY OF THE HONORABLE RODGER VICENTI PRESIDENT
JICARILLA APACHE TRIBE**

BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS

**ON S.2283: A BILL TO AMEND THE TRANSPORTATION EQUITY ACT FOR THE
21ST CENTURY**

Good morning, Mr. Chairman, Mr. Vice Chairman, and Members of this Committee. I am Rodger Vicenti, President of the Jicarilla Apache Tribe. I appreciate the opportunity to testify on Indian Reservation Roads issues.

With me is Mark Wright, our Tribal Engineer who directs our Contract Roads Department.

He is also a member of the TEA-21 Negotiated Rule-Making Committee and has an informed Understanding of operating the BIA roads program through 638 contracting.

My testimony primarily will address the "obligation limitation" imposed by the TEA-21 legislation on funding for the Indian Reservation Roads (IRR) Program. In addition, I will briefly discuss the TEA-21 negotiated rule-making process.

The Jicarilla Apache Tribe is a federally recognized Indian Nation with over 3,000 enrolled members, most of whom reside on the Jicarilla Reservation. Our Reservation is located in northwestern New Mexico and has over 980,000 acres of tribal land. Although our Reservation is substantially smaller than our original 50 million acre homeland, it has never been broken apart or subjected to the disastrous allotment policy. The Jicarilla Apache tribal government exercises sovereign authority over our territory and our members. We provide a full range of governmental services to all who reside on or near the Reservation. We also operate several BIA programs through 638 contracts, including Roads, Forestry, and Natural Resources departments. Our Tribe funds 90% of our governmental operations from our oil and gas revenues and other economic activity. However, the lack of good roads, an adequate water system, communications and other necessary infrastructure on our Reservation interferes with additional economic development and job opportunities.

Our Contract Roads Program administers over 1000 miles of BIA roads on our Reservation with an annual budget of \$2.4 million. The hundreds of miles of our gravel and earth-surfaced roads will require complete construction to serve our residents. These roads make up approximately 70% of the roads on the Jicarilla Apache reservation. This funding is inadequate given the fact that roads on the Reservation cost \$1,000,000 per mile to build.

Two years ago, the Jicarilla Apache Tribe along with other tribes worked hard to convince Congress to increase funding for Indian roads and bridges during the ISTEA re-authorization process which resulted in the TEA-21 legislation. The inadequate and unsafe conditions of our

roads provided the necessary justification for doubling the funding for Indian Reservation Roads.

We also urged Congress to make all roads funds available to tribes at the beginning of the fiscal year in the form of advance funding, so that project planning and development could occur with maximum flexibility at the local level. Congress agreed and included this provision in TEA-21. Though we received far less than what we needed, we are grateful for the work of this Committee and others, especially Senator Domenici, to secure increased funding from approximately \$191 million a year to \$275 million and to authorize advance funding for the IRR Program.

Unfortunately, new cuts were imposed on the IRR funding through what is known as the "obligation limitation" in TEA-21. In years past, IRR funds were exempt from the obligation limitation. As I understand the obligation limitation, the Federal Highway Administration (FHWA) is required to withhold a certain percentage, or approximately 10% of the total IRR "obligation authority" amount at the beginning of each fiscal year to be redistributed near the end of that fiscal year to recipients with projects that are immediately ready for funding.

However, in expanding the obligation authority Congress failed to include Indian tribes. As a result, tribes are barred from sharing in the redistribution, and therefore money authorized and appropriated for reservation roads is diverted to states for their general purposes.

As a result of the obligation limitation, Indian country lost approximately \$25 million of the \$225 million we were promised for FY 1998 and about \$32 million of the \$275 million we were promised in fiscal year 1999. We stand to lose even more in fiscal year 2000. Furthermore, the 1% set aside or approximately \$13 million additional funding for Indian bridges in ISTEA was removed from TEA-21, and Indian bridge funding now must come out of the IRR funding. While we are grateful for the increased funding and expanded advanced funding authority under TEA-21, the obligation limitation and the loss of the bridge set aside funding has resulted in a mere \$12.4 million increase to the IRR construction program nationwide.

This was an unintended result that is not only unfair to Indian country but also inconsistent with the trust relationship between the United States and the Indian tribes. The Jicarilla Apache Tribe objects to the withholding of IRR funds and we believe, at the very least, that any withheld IRR funds should be redistributed back to the IRR program.

A legislative change is necessary to exempt IRR funds from the obligation limitation. S. 2283 introduced by Chairman Campbell, Vice Chair Inouye and others would address the obligation limitation problem as well as other IRR Program related issues. Senators Domenici and Bingaman also introduced S. 2093, which solely addresses the obligation limitation problem. These bills would assure that the IRR Program is funded at the full authorized level of \$275 million for the remaining three years of TEA-21. The proposed legislation would also exempt from the obligation limitation any additional IRR funding increases that Congress may appropriate. The estimated impact on all other TEA-21 programs would be only about 0.1%. Although this amounts to a reduction of roughly \$250,000 to the State of New Mexico, the New Mexico Transportation Department supports S. 2093, recognizing the overall funding increases that would flow into the

state. This amounts to approximately \$8 million.

The Jicarilla Apache Tribal Council by resolution supports S.2093 to eliminate the obligation limitation that is now imposed on the IRR funding. This resolution also supports issues contained in S. 2293, such as clarifying that the "up to 6%" administrative funds must be made available to Indian tribes in accordance with Public Law 93-638, and establishing an IRR Pilot Program to allow tribes to enter into agreements directly with the FHWA under Public Law 93-638. I request that this resolution to be part of the record.

With regard to the Negotiated Rulemaking process, we strongly believe that TEA-21 must be amended to extend the deadline for completing the funding distribution formula to April 2003. I am informed that this on-going process will require additional time to complete regulations that Indian country will be bound by for the next generation. Our representative on the Negotiated RuleMaking Committee is prepared to answer any specific questions you may have regarding the Committee's work.

Thank you again for the opportunity to provide this testimony. Both Mr. Wright and I are available to answer any questions you may have.